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CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 368.

THE SIOUX TRIBE OF INDIANS, *Petitioner,*

v.

THE UNITED STATES.

MOTION

To Reconsider Denial of Petition for Certiorari to the Court of Claims and to Remand the Case to the Court of Claims for Further Proceedings.

RALPH H. CASE,
Attorney for Petitioner.

Of counsel:
JAMES S. Y. IVINS.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Comes now the petitioner in the above entitled action and moves for reconsideration of the order of this Court denying petition for a writ of certiorari to the Court of Claims and for an order of this Court remanding the case to the Court of Claims for further proceedings under the Act of August 13, 1946, Public Law 726, 79th Congress, "An Act to Create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes." The following statement is submitted in support of this motion:

The petition for a writ of certiorari in the above named case was filed August 5, 1946. The Act, above referred to, creating an Indian Claims Commission was approved August 13, 1946. The essential provisions of said act of

August 13, 1946, which are pertinent to this motion are as follows:

> Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after the date of the approval of this Act shall be considered by the Commission.
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> All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.
>
> In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U. S. C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature

of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

* * * * * * * * *

Sec. 11. Any suit pending in the Court of Claims or the Supreme Court of the United States or which shall be filed in the Court of Claims under existing legislation, shall not be transferred to the Commission: *Provided*, That the provisions of section 2 of this Act, with respect to the deduction of payments, offsets, counterclaims and demands, shall supersede the provisions of the particular jurisdictional Act under which any pending or authorized suit in the Court of Claims has been or will be authorized: *Provided further*, That the Court of Claims in any suit pending before it at the time of the approval of this Act shall have exclusive jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of any such suit.

This case was pending at the time of the approval of the Act of August 13, 1946, and is covered by Section 11 of that Act, quoted above.

At the time the petition for writ of certiorari in this case was filed, August 9, 1946, the bill to create an Indian Claims Commission had been passed by the Congress and was under consideration by the President. In view of the fact that the pending bill had not been signed, it could not have been relied upon by counsel for the petitioner and even a reference to the pending bill would have been inappropriate.

When the bill to create the Indian Claims Commission was signed by the President on August 13, 1946, the jurisdictional Act of June 3, 1920 (41 Stat. 738) was amended by the Act of August 13, 1946, in the particulars set out in Section 11 thereof—above quoted. The Sioux Tribe of Indians, as petitioner here, and as plaintiff below, were on and after August 13, 1946, entitled to an adjudication of their claims in accordance with the jurisdictional Act of June 3, 1920 (41 Stat. 738) as amended by the Act of August 13, 1946 *(supra)*. The legal effect of the Act of August 13, 1946, is that the Court of Claims is required to take into consideration the provisions of Section 2 thereof *(supra)* with respect to the deduction of payments, offsets, counterclaims and demands, and further that the Court of Claims alone is granted jurisdiction and required to exercise that jurisdiction to hear and determine any claim based upon fair and honorable dealings arising out of the subject matter of this particular action.

The right granted by the Congress to the petitioner herein by said Act of August 13, 1946, can only be secured to the petitioner by an order from this Court remanding the case to the Court of Claims for a new trial and for further proceedings under the said jurisdictional Act of June 3, 1920, as amended by the said Act of August 13, 1946.

Respectfully submitted,

RALPH H. CASE,
Attorney for Petitioner.

Of counsel:
JAMES S. Y. IVINS.